

EXHIBIT 13

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

-----X
IN RE CREDIT SUISSE - AOL)
SECURITIES LITIGATION)
)
) Case No. 1:02 CV 12146
----- (Judge Gertner)
)
This document relates to:)
)
ALL ACTIONS)
)
-----X

VIDEOTAPED DEPOSITION
OF
REINIER KRAAKMAN
New York, New York
Thursday, August 7, 2008

Reported by:
ANNETTE ARLEQUIN, CCR, RPR
JOB NO. 18033

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<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5 August 7, 2008</p> <p>6 9:54 a.m.</p> <p>7</p> <p>8 Videotaped deposition of REINIER</p> <p>9 KRAAKMAN, held at the offices of Davis,</p> <p>10 Polk & Wardwell, 450 Lexington Avenue,</p> <p>11 New York, New York, before Annette</p> <p>12 Arlequin, a Certified Court Reporter, a</p> <p>13 Registered Professional Reporter and a</p> <p>14 Notary Public of the State of New York.</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1</p> <p>2 A P P E A R A N C E S:</p> <p>3</p> <p>4</p> <p>5 KAPLAN FOX & KILSHEIMER LLP</p> <p>6 Attorneys for Plaintiff Bricklayers and</p> <p>7 Trowel Trades International Pension Fund,</p> <p>8 the Proposed Class and Dr. Hakala</p> <p>9 850 Third Avenue, 14th Floor</p> <p>10 New York, New York 10022</p> <p>11 BY: FREDERIC S. FOX, ESQ.</p> <p>12 JOEL B. STRAUSS, ESQ.</p> <p>13 MELINDA RODON, ESQ.</p> <p>14</p> <p>15</p> <p>16 DAVIS, POLK & WARDWELL</p> <p>17 Attorneys for Defendants Credit Suisse</p> <p>18 First Boston LLC and Credit Suisse First</p> <p>19 Boston USA</p> <p>20 450 Lexington Avenue</p> <p>21 New York, New York 10017</p> <p>22 BY: DANIEL J. SCHWARTZ, ESQ.</p> <p>23 AVI GESSER, ESQ.</p> <p>24 MELISSA OLIVER, ESQ.</p> <p>25 WILLOW D. CRYSTAL, ESQ.</p>
Page 4	Page 5
<p>1</p> <p>2 A P P E A R A N C E S (Cont'd.):</p> <p>3</p> <p>4</p> <p>5 SKADDEN ARPS SLATE, MEAGHER & FLOM LLP</p> <p>6 Attorneys for Laura Martin</p> <p>7 Four Times Square</p> <p>8 New York, New York 10036</p> <p>9 BY: MICHAEL W. MITCHELL, ESQ.</p> <p>10</p> <p>11</p> <p>12 ALSO PRESENT:</p> <p>13</p> <p>14 MICHAEL PINEIRO, Legal Video Specialist</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1</p> <p>2 IT IS HEREBY STIPULATED AND AGREED,</p> <p>3 by and between the attorneys for the</p> <p>4 respective parties herein, that filing</p> <p>5 and sealing be and the same are hereby</p> <p>6 waived</p> <p>7 IT IS FURTHER STIPULATED AND AGREED</p> <p>8 that all objections, except as to the</p> <p>9 form of the question, shall be reserved</p> <p>10 to the time of the trial.</p> <p>11 IT IS FURTHER STIPULATED AND AGREED</p> <p>12 that the within deposition may be sworn</p> <p>13 to and signed before any officer</p> <p>14 authorized to administer an oath, with</p> <p>15 the same force and effect as if signed</p> <p>16 and sworn to before the Court.</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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* Proceedings *

THE VIDEOGRAPHER: This is the start of the tape labeled No. 1 of the videotaped deposition of Reinier Kraakman in the matter of In Re Credit Suisse - AOL Securities Litigation.

This deposition is being held at 450 Lexington Avenue, New York, New York on August 7th, 2008 at approximately 9:54 a.m.

My name is Michael Pineiro from TSG Reporting, Inc. I'm the legal video specialist.

The court reporter is Annette Arlequin in association with TSG Reporting. Will counsel please introduce yourselves.

MR. SCHWARTZ: Daniel Schwartz, Davis, Polk & Wardwell, for the Credit Suisse defendants.

MR. GESSER: Avi Gesser, Davis, Polk & Wardwell, for the Credit Suisse defendants.

MS. CRYSTAL: Willow Crystal, Davis, Polk & Wardwell, for the Credit Suisse defendants.

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* Proceedings *

MR. MITCHELL: Michael Mitchell, Skadden, Arps, for Laura Martin.

MR. FOX: Frederic Fox, Kaplan Fox & Kilsheimer, for the plaintiffs.

MS. RODON: Melinda Rodon, Kaplan Fox & Kilsheimer, for the lead plaintiff.

MR. STRAUSS: Joel Strauss of Kaplan Fox & Kilsheimer for the lead plaintiff.

THE VIDEOGRAPHER: Will the court reporter please swear in the witness.

* * *

REINIER KRAAKMAN, called as a witness, having been duly sworn by a Notary Public, was examined and testified as follows:

EXAMINATION BY

MR. SCHWARTZ:

Q. Professor Kraakman, as I've said, my name is Daniel Schwartz. I'm with the firm of Davis, Polk and we're representing the Credit Suisse defendants in this case.

Have you ever been deposed before?

A. Yes, I have.

Q. Okay. How many times have you been

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R. Kraakman
deposed before?

A. Actually only once.

Q. I'm going to go over the ground rules very briefly. I take it you're probably familiar with them from your last experience.

I'll be asking questions today, you'll be giving me answers.

If you don't understand a question or you'd like me to rephrase a question, please let me know.

If you need a break at any time, please let me know that as well.

And the only caveat to that is that if we're in a middle of a question, I'd like you to give an answer and then we could take a break.

Is all of that clear?

A. Yes.

Q. Okay. Are you represented by counsel today?

A. Well, I have my associates here in my room. I guess I am.

Q. And by your associates, you're referring to Mr. Fox and --

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R. Kraakman

A. Mr. Fox and Joel and Melinda.

Q. Okay. Are there any medical or physical conditions that would prevent you from testifying truthfully and accurately today?

A. No.

Q. Okay. Did you do anything to prepare for your deposition today?

A. I met with Fred and Melinda and Joel yesterday afternoon, read over my report, read over the judge's opinion, Judge Gertner's opinion in this case.

Q. And the meeting yesterday, was that your only meeting in preparation for today's deposition?

A. That was my only meeting.

Q. Did you have any phone calls to prepare?

A. No phone calls to prepare.

Q. Other than the attorneys who you mentioned, was anyone else at the meeting yesterday?

A. No.

Q. Have you spoken with anyone about your deposition today?

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1 **R. Kraakman**
2 A. No.
3 **Q. About how long did you meet**
4 **yesterday?**
5 A. Two, two-and-a-half hours maybe. Two
6 hours.
7 MR. SCHWARTZ: Can you mark this as
8 Kraakman Exhibit 1.
9 (Defendants' Exhibit Kraakman 1,
10 Expert report of Professor Kraakman, marked
11 for identification, as of this date.)
12 THE WITNESS: Glad I got one too.
13 MR. GESSER: Hopefully look familiar.
14 THE WITNESS: Yes.
15 BY MR. SCHWARTZ:
16 **Q. Professor Kraakman, is this your**
17 **report in this case, your expert report?**
18 A. This is my expert report.
19 **Q. Can you flip to Appendix A. Exhibit**
20 **A rather. It starts on page 14.**
21 A. My curriculum vitae?
22 **Q. That's correct.**
23 **And this accurately reflects your CV?**
24 A. Yes.
25 **Q. Could you walk me through your, your**

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1 R. Kraakman
2 **Q. And -- other than as part of your**
3 **major while you were in college, did you take**
4 **any economics courses?**
5 A. No, I did not.
6 **Q. Did you take any courses in**
7 **statistics?**
8 A. I did in graduate school in
9 sociology.
10 **Q. And in graduate school did you take**
11 **any economics courses?**
12 A. No, I did not.
13 **Q. What was the -- was there a**
14 **particular area of sociology that you were**
15 **focused on?**
16 A. Well, I did my oral exam on class and
17 stratification.
18 **Q. And can you elaborate on what that**
19 **is?**
20 A. Yeah. That's looking at basically
21 people's backgrounds and seeing how much you can
22 predict about where they end up in society.
23 That's looking at mobility studies. I think
24 that's a fair sampling of what that literature
25 looks like.

1 **R. Kraakman**
2 **education from the end of high school until the**
3 **present?**
4 A. Okay. I went to Harvard College,
5 graduated in 1971.
6 I then had a Fulbright in Germany. I
7 spent a year studying sociology in Germany.
8 I came back, worked for a year in a
9 Harvard office. It was called the Office of
10 Tests in those days.
11 And then I spent three years as a
12 graduate student in sociology at Harvard. So
13 I'm ABD in sociology, all but dissertation in
14 sociology.
15 And then I went to Yale Law School
16 and I think that's it. I graduated in 1979.
17 **Q. What was your major in college?**
18 A. My major in college was a joint major
19 called history and science that had a core, a
20 set of history of science courses, but also had
21 requirements on the science side and on the
22 history side.
23 **Q. Now as part of your major, did you**
24 **take any courses on economics?**
25 A. No, I did not.

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1 R. Kraakman
2 **Q. At any point in time in your higher**
3 **education, have you taken or have you studied**
4 **economics?**
5 A. I haven't taken any formal courses in
6 economics.
7 **Q. Have you taken any courses that**
8 **provided instruction on the use of econometric**
9 **techniques?**
10 A. Well, I mean to some extent the stat
11 course I took in sociology was helpful.
12 I had some early experience during
13 the year I spent working prior to going to
14 graduate school, processing questionnaires,
15 doing regressions.
16 I'm sorry. What was the question
17 again?
18 **Q. Whether you had taken any courses**
19 **that provided instruction on the use of**
20 **econometric techniques.**
21 A. I suppose the only course that would
22 have been helpful in that regard would be the
23 sociology course in basic probability
24 statistics.
25 **Q. After you graduated from Yale Law**

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1 **R. Kraakman**

2 **School, what have you done since that time?**

3 A. I clerked on the second circuit for
4 Henry J. Friendly, who was a senior judge at the
5 time.

6 And then I began teaching immediately
7 thereafter at Yale. Taught there for five
8 years, moved to Cambridge and then there have
9 been some visiting teaching jobs that I've had
10 during the period of time that I've been a
11 professor at Harvard; one at NYU and one at
12 Georgetown.

13 **Q. What do you teach at Harvard?**

14 A. I typically teach one of four
15 courses; corporations, a course called corporate
16 finance which is not quite what a school
17 business course in corporate finance would be,
18 but it begins with four weeks devoted to Brealey
19 and Meyers, which is a standard first year
20 casebook in finance. I think it's even cited in
21 the Stulz expert report.

22 And I teach either a theory course,
23 current issues in corporate theory, or a
24 comparative corporate law seminar. Both of the
25 latter courses are really seminars. They're

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1 **R. Kraakman**

2 to some extent in the corporate finance course.

3 I don't do hands-on instruction in
4 doing event studies, but I talk about them and,
5 you know, give some rough sense of the
6 methodology behind them.

7 **Q. Do you teach any courses that discuss**
8 **the role of securities analysts in the capital**
9 **markets?**

10 A. Well, I'm sure I mention the role of
11 securities analysts in capital markets, but I
12 don't teach a course on that particular subject.

13 **Q. In the courses that you mentioned,**
14 **the role of securities analysts and the capital**
15 **markets, is that a focus of instruction?**

16 A. I bring in the notion of
17 informational intermediaries. I bring in the
18 ideas that are developed in my 1984 article with
19 Ron Gilson in the course.

20 I think it's important to talk about
21 the institutions that contribute to the
22 dissemination of information and its reflection
23 in price. Security analysts are one of those
24 institutions.

25 **Q. So would it be fair to say that you**

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1 **R. Kraakman**

2 not -- they're advanced seminars. They're not a
3 large selection of courses, whereas the finance
4 course and the basics corporations course are
5 large courses.

6 **Q. Do you ever teach securities law or**
7 **securities regulation?**

8 A. Well, there is a little of that that
9 comes into play in the basic corporations course
10 and there is a little that comes into play in
11 the finance course.

12 **Q. Does Harvard Law School offer a**
13 **course devoted to securities law or securities**
14 **regulation?**

15 A. Indeed it does.

16 **Q. Do you ever teach that course?**

17 A. I do not.

18 **Q. In the courses that you teach, do you**
19 **employ econometric techniques or instruct on**
20 **econometric techniques?**

21 A. Well, sometimes I introduce -- yes, I
22 introduce articles from finance journals and
23 seminars.

24 I certainly go through the capital
25 asset pricing model and talk about event studies

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1 **R. Kraakman**

2 **discuss the role of security analysts as one of**
3 **a number of institutions?**

4 A. That is correct.

5 **Q. Have you ever published academic**
6 **articles? I assume you have. Have you?**

7 A. Have I published academic articles?

8 **Q. Yes.**

9 A. Yes, it's here in the...

10 **Q. Have any of them been published in**
11 **any economic journal?**

12 A. Well, that depends on how you define
13 an economics journal.

14 If you look at Leo, Law of Economics
15 and Organization, there's an economics journal.
16 It's one of these cross-over journals. Then
17 I've published an article in an economics
18 journals.

19 **Q. And is that a peer-reviewed --**

20 A. Also Journal of Legal Studies.
21 Yeah, that's peer-reviewed.

22 **Q. The Leo.**

23 A. Leo is peer-reviewed.

24 **Q. What was the topic of the article**
25 **that you published in that journal?**

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R. Kraakman

A. It was about gatekeepers. Let me get you the exact topic.

Gatekeepers: The Anatomy of a Third-Party Enforcement Strategy.

Q. And do you recall what the article was about?

A. Oh, here's another one. Hands-Tying Contracts. Forgot about that. In the Journal of Law, Economics and Organization, also peer-reviewed.

Q. Do you recall what the gatekeeper article was about?

A. Yeah. It was about, it was about the analysis of imposing liability on third parties to control the behavior of primary wrongdoers.

Q. In any of the articles that you published in any journal, have you ever employed econometric techniques or have you ever employed an event study?

A. I've never employed an event study.

Q. Okay. Have you ever conducted an empirical analysis in any of your published articles on the effects of statements by securities analysts on the price of a stock?

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R. Kraakman

MR. FOX: Objection to the form.

You can -- you may answer. I just have an objection to the form of the question.

A. I have not. I'm a consumer of this literature rather than a producer.

Q. Turning back to your CV, it indicates that you served as a Kimber Fellow at the University of Toronto Law School and the Toronto Stock Exchange.

A. Yes.

Q. What is a Kimber Fellow?

A. That's a -- it's a temporary visiting professorship position. You teach for two weeks and you get feted, and you get to spend some time in Toronto.

Q. And what is the involvement of the Kimber Fellow with the Toronto Stock Exchange?

A. I believe the Toronto stock exchange is the funder and as I recall, I don't remember exactly, but I believe I gave a talk to, at the stock exchange to some of the, some of the luminaries there. I don't quite remember.

Q. And do you recall what the subject of

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R. Kraakman

your talk was?

A. I don't.

Q. You worked as a consultant for the Bank of International Settlements?

A. Yes, yes.

Q. And what did you do in that capacity?

A. I advised them on internal corporate governance, rules for the bank itself.

Q. And how long did you -- how long was your consultancy there?

A. Oh, I think it went on over, I don't know, nine months or something like that. A series of episodic meetings and exchanges of drafts, things in that order.

Q. And you're a board member of the? Batya and Isachar Fischer Center of Corporate -- for Corporate Governance and Capital Markets Regulation in Tel Aviv?

A. I am.

Q. And what does that position entail? What are your responsibilities?

Let me rephrase that.

What are your responsibilities as a board member of that institution?

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R. Kraakman

A. Availability for consultation should they need it.

Q. Have you ever been called upon to provide a consultation?

A. No, I have not.

Q. What does that organization do?

A. Well, it is headed by a former graduate student of mine and I take it it promotes research in capital markets, but it's a largely, my affiliation is largely honorific with that institution.

Q. You mentioned earlier that -- strike that.

You completed your course work for your Ph.D. but you didn't complete your dissertation; is that correct?

A. Not only did I not complete it, I did not begin it.

Q. Why is that?

A. Why is that. Let me see if -- this is either a very long answer or a very short one so I think I'm going to give you the short answer.

Q. I think I prefer that as well.

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1 **R. Kraakman**

2 A. Okay. I was not happy with sociology
3 as a discipline and thought that I could better
4 pursue my academic interests even as a
5 sociologist in law school.

6 **Q. Your CV says that you have served as**
7 **a litigation consultant to several law firms on**
8 **corporate and securities law issues; is that**
9 **correct?**

10 A. That's correct.

11 **Q. What does that mean, that you've**
12 **served as a litigation consultant?**

13 A. I guess I've written several expert
14 reports. I've also consulted in the sense of
15 giving advice.

16 **Q. What sort of advice have you given in**
17 **your role as a litigation consultant?**

18 MR. FOX: I would just object and
19 just caution the witness that to the extent
20 that Professor Kraakman's role was as a
21 consultant and not as an expert in any of
22 those cases, you shouldn't reveal the
23 nature of what you did or the identity of
24 who retained you or who the client was.

25 BY MR. SCHWARTZ:

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1 R. Kraakman

2 **Q. Let me clarify. I'm not attempting**
3 **to seek any sort of privileged information. I**
4 **just want to get a general sense of the kinds of**
5 **things that you would consult on, so you can**
6 **give me general answers to that question, just**
7 **the general types of issues.**

8 A. General types of issues. So capital
9 market efficiency, theories of capital market
10 efficiency is one example.

11 **Q. Are there any others that you can**
12 **think of?**

13 A. I've talked about my views on
14 Delaware corporate law, specifically in the
15 acquisition context, and consulted on that. The
16 construction of acquisition contracts,
17 particularly provisions.

18 **Q. How many times have you been retained**
19 **as an expert to issue an expert report?**

20 A. Well, only once in the last four
21 years.

22 **Q. And what case was that?**

23 A. Black Hills.

24 **Q. Is that the Forsythe case?**

25 A. That's the Forsythe case, yes.

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1 R. Kraakman

2 **Q. What was your expert opinion in that**
3 **case concerning?**

4 A. Earn-out clauses in acquisition
5 agreements; how to construe them, how to
6 construe this particular earn-out clause.

7 **Q. Is that something that you had prior**
8 **experience with, earn-out clauses?**

9 A. No, but it's something that there is
10 a literature about and I thought I had something
11 to offer in terms of making sense out of this
12 particular badly drafted agreement.

13 **Q. When you have been retained as a**
14 **litigation consultant either in terms of issuing**
15 **an expert report or serving as a consultant, do**
16 **you more frequently serve in that capacity on**
17 **behalf of plaintiffs or defendants or is it**
18 **about equal?**

19 A. Since -- I don't recall over the
20 entire course of my career, but in the one
21 instance besides this one, I was a consultant
22 for the plaintiff.

23 **Q. That's the Forsythe case.**

24 A. That's Forsythe case.

25 **Q. Right, but I'm saying even in cases**

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1 **R. Kraakman**

2 **in which you have not issued an expert report or**
3 **been retained to issue an expert report, have**
4 **you -- have your engagements as a consultant**
5 **tended to be on one side of the case or another?**

6 A. I don't believe so. I worked as a
7 consultant on other cases recently. I didn't
8 provide an expert report, but I was on the
9 defense side on that case.

10 **Q. So you would say that you've done**
11 **work on both sides?**

12 A. Yes.

13 **Q. Have you ever been found unqualified**
14 **to serve as an expert in a case?**

15 A. Not to my knowledge, no.

16 **Q. Has anyone ever moved to have your**
17 **testimony, your expert testimony precluded?**

18 A. Yes. I think that's what happened in
19 my last consultation. I don't know what the
20 outcome of that was. I don't know whether --
21 it's my impression they decided not to use my
22 report, the firm that employed me.

23 **Q. Have you ever worked as a research or**
24 **equity securities analyst?**

25 A. No, I have not.

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1 R. Kraakman
2 **Q. Have you ever worked in the media or**
3 **entertainment industry?**
4 A. Only to the extent that teaching law
5 can be considered as such.
6 **Q. Have you ever worked in the Internet**
7 **or online industry?**
8 A. No, I have not.
9 **Q. Ever in the advertising industry?**
10 A. No, I have not.
11 **Q. Have you ever worked at a law firm?**
12 A. Well, I did a summer clerkship at
13 Debevoise.
14 **Q. Are you admitted to the bar?**
15 A. No, I am not. That's because I
16 haven't taken the bar by the way.
17 **Q. And was that by choice that you...**
18 A. That was by choice, yeah.
19 **Q. When were you retained in this case?**
20 A. Gee, I don't remember the exact date.
21 **Q. Can you give an approximate date?**
22 A. Two, two-and-a-half months ago I
23 would gab a guess.
24 **Q. Do you recall whether it was before**
25 **or after May 1 of 2008?**

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1 R. Kraakman
2 **Q. Was that in a securities case do you**
3 **recall?**
4 MR. FOX: I'm going to object and,
5 you know, as you know, work that Professor
6 Kraakman has done as a consultant is not
7 discoverable, so I'll let him answer that
8 question that you just asked but, and I'll
9 listen to your other ones if you have any,
10 but that's probably about it.
11 A. So would you repeat the question?
12 **Q. Yes.**
13 **Was it a securities case?**
14 A. Yes, it was.
15 **Q. Are you being compensated for your**
16 **time in this case?**
17 A. I am.
18 **Q. And at what rate are you being**
19 **compensated?**
20 A. As my report says, \$500 an hour.
21 **Q. And who is compensating you?**
22 A. The firm of Kaplan Fox & Kilsheimer.
23 **Q. Do you have a retention agreement**
24 **with the firm of Kaplan Fox?**
25 A. No.

1 **R. Kraakman**
2 A. May 1, 2008? I don't recall.
3 Probably after but I don't recall.
4 **Q. By whom were you retained?**
5 A. I was contacted by Fred Fox here.
6 **Q. And did you have a general**
7 **understanding of the purpose of why you were**
8 **being retained?**
9 A. Well, I had a conversation, a general
10 conversation about the nature of the case, I
11 think a relatively brief one and then was sent
12 some documents, including, including the opinion
13 in this case, Judge Gertner's opinion.
14 **Q. Have you worked with Mr. Fox before?**
15 A. I have not been an expert for Mr. Fox
16 before.
17 **Q. Have you served in a consulting**
18 **capacity?**
19 A. I have served in a consulting
20 capacity.
21 **Q. More than once?**
22 A. No.
23 **Q. And approximately when did you serve**
24 **in that consulting capacity?**
25 A. Perhaps a year, 14 months ago.

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1 R. Kraakman
2 **Q. Have you been -- have you received**
3 **anything so far for your work in this case?**
4 A. Yes. I received compensation for all
5 the work I did up until August 1st in this case,
6 including drafting a report.
7 **Q. And what is the total amount of**
8 **compensation that you've received for your work**
9 **in this case to date, approximately?**
10 A. Oh, I don't know. Maybe 10, \$11,000.
11 **Q. Other than your hourly rate, do you**
12 **expect to receive any other compensation in**
13 **connection with your work in this case?**
14 A. I do not.
15 **Q. So you won't receive any**
16 **contingency -- you don't have any contingency**
17 **agreement?**
18 A. I do not.
19 **Q. And other than Kaplan Fox, are you**
20 **receiving compensation related to this case from**
21 **any other source?**
22 A. No, I'm not.
23 **Q. And is anyone else receiving**
24 **compensation based on your work in this case?**
25 A. No, they are not.

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1 R. Kraakman
2 **Q. Have you ever done any work with the**
3 **CBIZ Valuation Group, C-B-I-Z?**
4 A. No.
5 **Q. How many hours total did you spend**
6 **preparing your expert report in this case?**
7 A. Well, I guess I'd have to do the
8 math. I can divide 10, \$11,000 by 500 and, you
9 know, 22, 24 hours. Something like that.
10 **Q. Is that more or less than you spent**
11 **on your report in the Black Hills case?**
12 A. Oh, it's much less.
13 **Q. And how much time did you spend in**
14 **Forsythe versus Black Hills, approximately, on**
15 **your expert report in that case?**
16 A. Well, at least twice as much time,
17 perhaps even more than that. Maybe three times
18 as much time. That involved a much more fact
19 specific situation. A huge amount of
20 depositions to go through and things of that
21 nature.
22 **Q. Did anyone assist you in the**
23 **preparation of your report?**
24 MR. FOX: In this case?
25 MR. SCHWARTZ: In this case, yes.

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1 R. Kraakman
2 A. I have not.
3 **Q. Have you spoken with him since you**
4 **were retained in this case?**
5 A. No, I haven't.
6 **Q. Do you have a close relationship with**
7 **him?**
8 A. I regard him as a friend. He's a
9 coauthor. Close relationship, I mean I would
10 ask for a definition but...
11 **Q. Are you familiar with Scott Hakala?**
12 A. Only insofar as I've seen the summary
13 of his event studies.
14 **Q. Have you read his report in this**
15 **case?**
16 A. I have not read his report in this
17 case.
18 **Q. Have you ever met him or spoken to**
19 **him?**
20 A. I have never met him or spoken to
21 him.
22 **Q. And how about Laurentis Moray? Have**
23 **you ever -- are you familiar with him?**
24 A. His name may have been mentioned to
25 me yesterday.

1 R. Kraakman
2 A. No, they did not.
3 **Q. And you wrote the report yourself?**
4 A. I certainly did, yes.
5 **Q. You did all the drafts of your**
6 **report?**
7 A. I did all the drafts.
8 **Q. Other than the attorneys at Kaplan**
9 **Fox, have you spoken with anyone else about**
10 **your, about your report in this case?**
11 A. No, I have not.
12 **Q. Other than the attorneys with Kaplan**
13 **Fox, have you spoken with anyone about your**
14 **opinions in this case?**
15 A. No, I haven't.
16 **Q. You were coauthor of a book with**
17 **Bernard Black; is that correct?**
18 A. I was.
19 **Q. Are you aware that Professor Black**
20 **has also given an expert report in this case?**
21 A. I learned that yesterday afternoon.
22 **Q. Have you read his report?**
23 A. I have not.
24 **Q. Have you spoken with him about this**
25 **case?**

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1 R. Kraakman
2 Is he the statistician or a
3 statistician?
4 **Q. He is a statistician.**
5 MR. FOX: I would just caution the
6 witness not to disclose any communications
7 between --
8 THE WITNESS: I see. Okay.
9 MR. FOX: -- us in preparation for
10 this deposition.
11 BY MR. SCHWARTZ:
12 **Q. But you haven't spoken with Dr. Moray**
13 **in connection with this case?**
14 A. No.
15 **Q. Or in any other fashion?**
16 A. Not in any other connection. Never
17 heard of the man.
18 **Q. Professor, are you a financial**
19 **economist?**
20 A. As I say in my report, I am not a
21 financial economist.
22 **Q. What areas are you an expert in?**
23 **What are your areas of expertise?**
24 MR. FOX: Objection.
25 A. Corporate law, the interaction

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1 R. Kraakman
2 between finance and some aspects of corporate
3 and securities law.

4 **Q. And --**

5 A. Principally corporate law.

6 **Q. And does this report draw on your
7 expertise in corporate law?**

8 MR. FOX: Objection.

9 A. It draws on my scholarly work on
10 efficient capital markets.

11 **Q. And would you consider that to be
12 your expert -- to be part your expertise in
13 corporate law?**

14 A. In corporate law and corporate
15 finance, yes.

16 **Q. What makes you an expert in corporate
17 law in your view?**

18 A. What makes me an expert?

19 **Q. How did you develop your expertise in
20 corporate law?**

21 A. On-the-job training in the sense of
22 teaching and writing and, I don't know, reading.

23 I have a casebook, which is now in
24 its second edition. It's coauthored with
25 Chancellor Allen, as you know used to be the

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1 R. Kraakman
2 turnover and the choice between or the
3 relationship of CEO tenure to sale of the firm,
4 target firms.

5 **Q. Do either of those working papers
6 involve empirical research on the effects of
7 statements by securities analysts on stock
8 price?**

9 A. No.

10 **Q. You say you're broadly familiar with
11 the literature on market efficiency as well as
12 econometric techniques such as event studies; is
13 that correct?**

14 A. Yes.

15 **Q. What do you mean by broadly familiar?**

16 A. I'm a consumer. I think I can
17 understand the articles produced by financial
18 economists, but I wouldn't consider myself
19 qualified to, for example, discuss alternative
20 event study methodologies or something like
21 that.

22 **Q. Would you consider yourself qualified
23 to perform an event study?**

24 A. Give me two or three days and I
25 could, yeah. I haven't had to so far.

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1 R. Kraakman
2 chancellor of the Delaware Chancery Court.

3 I teach the stuff.

4 **Q. And your expertise in the interaction
5 between corporate finance and corporate law, how
6 did you develop your expertise in that area?**

7 A. Through research.

8 **Q. Have you written a casebook on that
9 topic?**

10 A. I have not, although I wrote some of
11 the supplements to Ron Gilson's first edition of
12 corporate, corporate -- Mergers and Acquisitions
13 I guess it was called.

14 **Q. Have you ever conducted any original
15 empirical research in the areas of corporate
16 finance?**

17 A. It depends on what you mean by
18 corporate finance.

19 Yes. I'll just answer that yes. I
20 have two working papers with John Coates dealing
21 with target companies' decisions to be acquired
22 and the relationship between that and
23 compensation of CEOs, option compensation of
24 CEOs.

25 And also another piece looking at CEO

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1 R. Kraakman
2 **Q. So you've never been asked to perform
3 an event study.**

4 A. No.

5 **Q. And you've never been retained as an
6 expert to opine on the effect of a particular
7 analyst statement on a particular security's
8 price?**

9 MR. FOX: Objection.

10 A. No.

11 **Q. Did you make any assumptions in
12 preparing your expert report in this case?**

13 A. Did I make any assumptions.

14 Well, I, I assumed that -- to the
15 extent that I discussed the facts in this case,
16 I assumed that they were as the plaintiffs have
17 represented them and as I understood them to be
18 represented in Judge Gertner's opinion.

19 **Q. Did you do anything to verify those
20 assumptions other than read the opinion or speak
21 with counsel?**

22 A. I did not. That was not what I was
23 requested to do.

24 **Q. What assumptions -- sorry.
25 Other than the assumptions that you**

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1 **R. Kraakman**
2 **just spoke about with respect to the facts, did**
3 **you make any other assumptions in the course of**
4 **preparing your report or reaching your**
5 **conclusions in this case?**
6 A. Well, I assumed -- I don't know the
7 assumptions. I think I mentioned -- well, could
8 you give me an example of what you mean by
9 another assumption?
10 **Q. Did you make any assumptions about**
11 **market conditions, for example?**
12 MR. FOX: Objection.
13 BY MR. SCHWARTZ:
14 **Q. Did you make any assumptions about**
15 **the content of information that was in the**
16 **market at any particular time as another**
17 **example?**
18 A. Beyond what was represented to me by
19 counsel to plaintiff and what I gleaned from
20 Judge Gertner's opinion, I didn't. I mean I
21 assumed the methodological framework that I,
22 that comes from my 1984 article if that's
23 relevant here.
24 **Q. If any of the assumptions that you**
25 **made with respect to the facts, for example,**

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1 **R. Kraakman**
2 **certainly read it over.**
3 **Q. Okay. Well, be that as it may.**
4 **In reading it over, did you see**
5 **anything in it that you wanted to change that**
6 **you no longer think is correct?**
7 A. I think I misspelled Hillary Sale's
8 name at one point in the report.
9 **Q. Anything of substance.**
10 A. No.
11 **Q. So you stand by all the opinions?**
12 A. I stand by all the opinions expressed
13 in the report.
14 **Q. Paragraph 4 of your report, does that**
15 **identify the materials that you relied on?**
16 A. Yes, it does.
17 **Q. Did you consult any other materials**
18 **that are not listed in this paragraph?**
19 A. No, I did not.
20 **Q. Did you review the complaint in this**
21 **case?**
22 A. Yes, I had a copy of the complaint.
23 **Q. Is that listed here?**
24 A. No. I guess I overlooked that.
25 **Q. Other than the complaint, are there**

1 **R. Kraakman**
2 **proved to be incorrect as a factual matter,**
3 **would it change the opinions that you expressed**
4 **in this report?**
5 MR. FOX: Objection.
6 A. An example? For example?
7 **Q. Well, for example, if the facts were**
8 **not as they were represented to you by**
9 **plaintiff's counsel but were different from**
10 **that, would it change?**
11 A. Well, yeah. If there was no
12 scienter, for example on the part of the
13 security analysts involved. I mean if -- that
14 would certainly change my analysis of the
15 applicability of the fraud-on-the-market
16 doctrine. I just have one little throw-away
17 line about, in my report on that but...
18 **Q. So the mental state of the defendants**
19 **is an assumption that you made that your report**
20 **relies on?**
21 A. Yes.
22 **Q. Is there -- you said earlier that you**
23 **re-reviewed your expert report in preparation**
24 **for this deposition; is that correct?**
25 A. I don't think I said that but I

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1 **R. Kraakman**
2 **any other materials that are not listed here**
3 **that you reviewed in preparing for your**
4 **assignment in this case?**
5 A. No.
6 **Q. Do you know what the allegations in**
7 **this case are?**
8 A. Well, I know the allegations from I
9 suppose my recollection of the complaint and of
10 course Judge Gertner's opinion.
11 **Q. And what do you understand the**
12 **allegations to be generally speaking?**
13 A. Well, I understand the allegations to
14 be that the Credit Suisse security analysts
15 wrote misleading, misleadingly optimistic
16 reports based -- misleading with respect to both
17 private information they had about the issuer,
18 AOL Time Warner, and with respect to their own
19 actual views about the information, the public
20 information they had and its significance for
21 Time Warner's prospects.
22 **Q. When you say "Time Warner's**
23 **prospects" --**
24 A. AOL --
25 **Q. -- you're referring to the combined**

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Page 43

1 **R. Kraakman**
2 **companies?**
3 A. I am, but specifically the AOL
4 division of it.
5 **Q. Besides the expert reports and the**
6 **portions of expert reports that you've**
7 **identified in paragraph 4, did you review any of**
8 **the other expert opinions in this case?**
9 A. No, I did not.
10 **Q. Other than Judge Gertner's opinion in**
11 **this case, did you read any other cases in**
12 **preparing your expert report in this case?**
13 A. No, I didn't and I wasn't asked to.
14 **Q. In connection with your expert report**
15 **in this case, did you read any research analyst**
16 **reports?**
17 A. Yes. I read two Lehman Brothers
18 reports that I believe I identified here.
19 **Q. Did you review any Credit Suisse**
20 **reports?**
21 A. No, I did not.
22 **Q. Prior to your work on this case, had**
23 **you ever read a research analyst report?**
24 A. I would say I have at some point, but
25 I'm not a big investor in the market so I don't

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1 **R. Kraakman**
2 **whether Credit Suisse's research in fact had an**
3 **effect on AOL stock price in 2001?**
4 MR. FOX: Objection.
5 A. I think we need to rephrase that
6 question.
7 **Q. Well --**
8 A. Remember, I made the --
9 **Q. Why don't you answer the question**
10 **that I asked and if you don't understand it,**
11 **I'll try and rephrase it. But if you do**
12 **understand it, please give me an answer to the**
13 **question I asked.**
14 MR. FOX: Well, I think he asked you
15 to rephrase the question.
16 MR. SCHWARTZ: Well, if he asks me to
17 rephrase the question.
18 MR. FOX: I think he did.
19 A. Yes. Could rephrase the question?
20 **Q. Did you form an opinion on whether**
21 **Credit Suisse's research in fact had an effect**
22 **on AOL stock price in 2001?**
23 MR. FOX: Objection.
24 A. I think the best way to answer that
25 is that given the assumptions that I made about

1 R. Kraakman
2 quite remember when.
3 **Q. Would it be fair to say that you**
4 **don't routinely read research analyst reports?**
5 A. That's fair to say.
6 **Q. Now in paragraph 3 of your report you**
7 **list the questions you were asked to opine on;**
8 **is that correct?**
9 A. That is correct.
10 **Q. And did you reach a conclusion as to**
11 **each of these four questions?**
12 A. I did.
13 **Q. And are those conclusions listed in**
14 **paragraph 17 of your report?**
15 A. I believe they are, but let me just
16 check what 17 is.
17 (Document review.)
18 **Q. I think there may be two paragraph**
19 **17s. I'm talking about the one on page 11.**
20 A. Yes.
21 **Q. Now other than these four questions,**
22 **did you form an opinion on any other issue in**
23 **preparing your report in this case?**
24 A. No, I did not.
25 **Q. So you did not form an opinion on**

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1 R. Kraakman
2 what Credit Suisse knew; that is, the
3 allegations made by the plaintiffs here, one
4 could say that there was an effect.
5 Although securities prices didn't,
6 insofar as I know, change dramatically, maybe
7 there were a couple of instances where security
8 prices might have been affected by particular
9 reports.
10 But my understanding, again from
11 reading Judge Gertner's opinion and looking over
12 the, what's his name, Hakala's, summary of
13 Hakala's event studies, that those were
14 relatively dirty dates in terms of other things
15 going on in addition to Credit Suisse's reports.
16 **Q. So is it -- let me make sure I**
17 **understand this.**
18 **Is it your testimony that whether or**
19 **not Credit Suisse's research in fact had an**
20 **effect on AOL stock price is dependent on the**
21 **information content that the Credit Suisse**
22 **analysts had?**
23 MR. FOX: Objection.
24 A. Well, it's contingent on the
25 information environment as a whole.

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1 R. Kraakman
2 **Q. Well --**
3 A. In general, I think that the Credit
4 Suisse report had very little measurable effect
5 on the security prices. I think there are a
6 couple of instances where they might have, but
7 not more than that.
8 It was my impression, based again on
9 Judge Gertner's opinion and based on actually
10 Professor Stulz' expert report, that by and
11 large most of the Credit Suisse research reports
12 simply reiterated a position that Credit Suisse
13 had taken previously or echoed information from
14 AOL Time Warner. They were not conduits of new
15 information or misinformation in the -- new
16 information into the market. Scratch
17 misinformation.
18 **Q. What I'm trying to understand is,**
19 **when I asked you if you formed an opinion on**
20 **whether Credit Suisse's research in fact had an**
21 **effect on AOL stock price in 2001, what I**
22 **understood you to tell me was that if you --**
23 **that based on assumptions you made about**
24 **information that the analysts had, you could say**
25 **that they had an effect on stock price.**

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1 R. Kraakman
2 **studies?**
3 A. I did not.
4 **Q. Is it -- if everything -- if**
5 **everything the research analysts wrote in their**
6 **report, if they had been forthright, if what was**
7 **the content of their published research reports,**
8 **if you assumed that that was consistent with**
9 **their internal beliefs, would they have had an**
10 **effect on stock price in your view, on AOL stock**
11 **price?**
12 MR. FOX: Objection.
13 A. Now if what they had written were
14 consistent with what I assumed --
15 **Q. But that's not what I'm asking.**
16 A. Okay.
17 **Q. I'm asking if you assumed that what**
18 **their internal beliefs were is consistent with**
19 **what was actually published, under those**
20 **circumstances would you believe that they had an**
21 **effect on AOL stock price?**
22 MR. FOX: Is that a different opinion
23 you're asking for?
24 MR. SCHWARTZ: I'm trying to
25 understand -- I'm asking the question that

1 **R. Kraakman**
2 **So what I'm trying to ask you is, is**
3 **it your view that if the information that they**
4 **had was one thing, then they had an effect on**
5 **stock price and if the information that they had**
6 **was different from that, different from that**
7 **assumption, then they did not have an effect on**
8 **stock price?**
9 MR. FOX: Objection.
10 A. It's my view that based on the
11 assumptions that I made about what information
12 they had, that if they had been fully forthright
13 and honest in writing their reports, there would
14 have been an effect on stock prices.
15 But given that they weren't, by and
16 large there was very little effect on stock
17 prices, if any at all. Nothing I saw was
18 inconsistent with the possibility that a couple
19 of the reports might have influenced stock
20 prices but...
21 **Q. But you didn't do any study to**
22 **determine whether those reports in fact had an**
23 **effect on stock prices?**
24 A. No.
25 **Q. You didn't do any econometric**

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1 R. Kraakman
2 I'm asking.
3 MR. FOX: Okay.
4 BY MR. SCHWARTZ:
5 **Q. If you understand.**
6 MR. FOX: Objection. I don't
7 understand the question.
8 A. Well, let's start over. We know that
9 by and large the Credit Suisse reports did not
10 have in almost all cases any effect on stock
11 prices.
12 If the reports were -- I mean if I
13 switch my assumption and I assume they were
14 honestly reporting their beliefs and there is no
15 merit to the allegations in this case that they
16 had private information about accounting
17 irregularities or layoffs that they did not
18 share in their reports, then there would be --
19 the reports would also have no effect on stock
20 prices, right.
21 **Q. Okay. Please describe the**
22 **methodology you used in reaching your**
23 **conclusions and the opinions that you express in**
24 **this report.**
25 A. Well, I relied on what I take to be

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1 R. Kraakman
2 generally accepted in the literature, in
3 finance literature, views about market
4 efficiency. I'm simply extrapolating from a
5 theory I think that I share with Professor
6 Stulz.

7 The methodology is reviewing the
8 finance, reviewing some aspects of the finance
9 literature dealing with analyst reports and
10 bringing that together with my understanding of
11 the larger finance theory and empirical research
12 dealing with market efficiency.

13 **Q. Now are you an expert on the finance**
14 **literature dealing with the effect of securities**
15 **analyst statements on stock prices?**

16 A. I've reviewed a portion of that
17 literature.

18 **Q. Prior to your work in this case, were**
19 **you familiar with that literature?**

20 A. I had read back in 1984, as you know,
21 this literature goes back to the early 1970s and
22 even before, I had read several articles, I
23 don't recall which, as part my background
24 research for my '84 article on Mechanisms of
25 Market Efficiency.

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1 R. Kraakman
2 tell you I've read these articles.

3 **Are you more of an expert than I am**
4 **on this literature?**

5 A. Probably not. I don't know what your
6 background is and how used you are to reading
7 finance articles but...

8 **Q. In paragraph 3B you say that the**
9 **question you address is: "Whether assuming such**
10 **an effect..." meaning an effect of the reports**
11 **of prominent securities analysts on share prices**
12 **in an efficient market "...whether there is a**
13 **justification for treating analyst statements**
14 **differently than issuer statements for purposes**
15 **of fraud-on-the-market theory."**

16 **Is that essentially what the second**
17 **question that you addressed is?**

18 MR. FOX: Well, it is what it is.

19 A. It is what it is.

20 **Q. What do you mean by the**
21 **fraud-on-the-market theory?**

22 A. The theory set out in the Basic case
23 and developed in the case law since then; the
24 notion that investors are entitled to the
25 presumption of reliance on market price that's

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1 R. Kraakman
2 **Q. Had you kept up to date with that**
3 **literature since your article on the Mechanisms**
4 **of Market Efficiency?**

5 A. Not particularly until I began to
6 work on this report.

7 **Q. So does your review of that**
8 **literature in your view make you an expert on**
9 **that literature?**

10 MR. FOX: Objection.

11 A. Define an expert for me.

12 **Q. Someone who is more qualified to**
13 **discuss the contents of the literature than**
14 **someone who is not an expert in that literature.**

15 A. Well, I think I'm more qualified to
16 discuss the content of that literature than
17 someone who hasn't read the articles I've read.
18 I certainly haven't reviewed the entire
19 literature. You know, there must be 150
20 articles out there, 200 articles.

21 **Q. Are you more of an expert than**
22 **Mr. Fox, for example, on this literature?**

23 MR. FOX: Objection.

24 A. I have no idea.

25 **Q. Okay. Are you more of an -- I'll**

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1 R. Kraakman
2 not distorted by misrepresentations by issuers
3 or other speakers who can be expected to
4 influence the market price.

5 **Q. Is the presumption of reliance a**
6 **legal device that basic discusses?**

7 A. Yeah, it's a presumption. It's a
8 legal presumption.

9 **Q. Do you have more expertise on the**
10 **presumption of reliance than someone who reads**
11 **the Basic case?**

12 A. Well, as I say, I didn't do a
13 comprehensive review of the case law, of the
14 fraud-on-the-market theory since Basic.

15 I have read some other cases on and
16 off, but I would have to, I would have to bone
17 up on more recent case law.

18 I wasn't asked, by the way, to opine
19 about --

20 **Q. Well, didn't you say that the**
21 **presumption of reliance was included in the**
22 **fraud-on-the-market theory?**

23 A. Yes.

24 **Q. And that the fraud-on-the-market**
25 **theory, the application of the**

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Page 55

1 **R. Kraakman**
2 **fraud-on-the-market theory was part of your**
3 **opinion, wasn't it?**
4 A. That's true. That's true.
5 What I'm essentially saying here is
6 that just looking at the basic opinion, and
7 which doesn't distinguish between issuers and
8 other speakers, and considering issues of
9 policy, I see no reason to distinguish analysts
10 or at least very prominent analysts from
11 issuance for fraud-on-the-market theory
12 purposes.
13 **Q. Have you read a case called DeMarco**
14 **versus Lehman Brothers? Are you familiar with**
15 **that case?**
16 A. I have not read that case. I saw a
17 reference to it, a number of references to it in
18 Judge Gertner's opinion, but I have not read it.
19 **Q. Have you read the Lantronix case out**
20 **of the Southern District of New York?**
21 A. No, I have not.
22 **Q. Have you read the MetroMedia case out**
23 **of the Southern District of New York?**
24 A. No.
25 **Q. Have you read any cases other than --**

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1 **R. Kraakman**
2 **policy?**
3 A. No, a social policy.
4 **Q. Are you an expert on social policy?**
5 A. Well, insofar as one writes about or
6 I wrote about market efficiency and the
7 institutions that serve to preserve the
8 efficiency of market prices and the information
9 content of market prices to protect investors, I
10 suppose I am an expert.
11 **Q. Do you view the court's role -- do**
12 **you believe it's the role of the court to**
13 **implement social policy?**
14 MR. FOX: Objection.
15 A. I believe it's the role of the court
16 to implement social policy insofar as the policy
17 is embedded in the law that the court is
18 applying.
19 **Q. You said that your expertise in**
20 **social policy with respect to the mechanisms of**
21 **the capital markets goes back to your work in**
22 **preparing your article in the early 1980s.**
23 A. 1984 and then a follow-up article in
24 2000 -- I guess it was published in 2003 where
25 Gilson and I revisit in the wake of the tech

1 **R. Kraakman**
2 **have you read any cases that address the**
3 **fraud-on-the-market theory -- strike that.**
4 **Other than Judge Gertner's decision,**
5 **have you read any cases that discuss the**
6 **application of the fraud-on-the-market theory to**
7 **research analyst statements?**
8 A. No, I have not.
9 **Q. You said as a policy matter it's your**
10 **view that there is no reason to distinguish the**
11 **opinions of prominent securities analysts from**
12 **issuers for purposes of the fraud-on-the-market**
13 **theory. Is that --**
14 A. The statements, yes.
15 MR. FOX: Objection.
16 BY MR. SCHWARTZ:
17 **Q. What do you mean as a policy matter?**
18 **What sort of policy are you talking about?**
19 A. Well, I assume that the principal
20 policy at stake here is the desire to protect
21 market prices from misinformation, from
22 distortions and to allow investors to rely on
23 market prices without concern that those prices
24 are manipulated by authoritative speakers.
25 **Q. So are you referring to a regulatory**

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1 R. Kraakman
2 bubble on the Internet bubble and the market
3 collapse that followed, the mechanisms of market
4 efficiency.
5 **Q. Now in between your 1984 article and**
6 **your 2003 article, did you write other articles**
7 **on the mechanisms of market efficiency?**
8 A. No, I did not.
9 **Q. And in connection with your 2003**
10 **article, did revisiting your 1984 article, did**
11 **you review the research in the academic finance**
12 **journals about the effects of securities analyst**
13 **statements on stock prices?**
14 A. I think I may have -- I don't recall.
15 I think I may have read one or two articles on
16 that point.
17 The thrust of the 2003 article is one
18 didn't have to turn necessarily to behavioral
19 finance, noise trading and stuff like that to
20 explain the seemingly irrational market
21 behavior. Some of that could be explained in
22 terms of conflicts of interest on the part of
23 informational intermediaries in the market and
24 certainly financial analysts, as well as
25 investment banks fall into that category.

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1 R. Kraakman

2 **Q. But you're not certain whether you in**
3 **fact reviewed literature relating to -- that**
4 **discusses the effects of securities analyst**
5 **statements --**

6 A. I may well have done so, Dan. I
7 don't believe I cited any in that article.

8 **Q. But you can't recall for sure.**

9 A. I can't recall for sure.

10 **Q. Did you review any literature that**
11 **discusses the empirical effects -- strike that.**

12 **Are you aware of any literature that**
13 **discusses, that conducts empirical tests on**
14 **whether conflicts of interest bias securities**
15 **research in the market?**

16 MR. FOX: Objection.

17 A. The principal article I read on that
18 point is not empirical research, it's the Jill
19 Fisch and Hillary Sale piece that I cite in the
20 report.

21 I did read a number of articles that
22 looked at the effect of financial analysts'
23 reports on stock prices however.

24 **Q. You read that in connection with your**
25 **2003 article or you read that in connection**

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1 R. Kraakman

2 **Do you have more expertise than the**
3 **ultimate fact finder that will be impaneled in**
4 **this case?**

5 A. No.

6 **Q. And on the empirical side, the**
7 **empirical component of the first question --**

8 A. Yes.

9 **Q. -- you conducted no independent**
10 **studies to reach your conclusion on that**
11 **question; is that correct?**

12 A. That's correct.

13 **Q. Let's jump to the third question:**
14 **"Whether prices in an efficient market react**
15 **only to new information bearing on share value."**

16 **Is that an empirical question?**

17 A. Yes.

18 **Q. And did you do any studies to**
19 **determine whether prices in an efficient market**
20 **react only to new information bearing on share**
21 **value?**

22 A. I think that's a definition of a
23 semi-strong efficient market. I think it's also
24 very close to what your expert, Professor Stulz,
25 says at one point in his report.

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1 R. Kraakman

2 with --

3 A. I may have read something about that
4 in connection with my 2003 article. We already
5 went through that.

6 **Q. Right.**

7 A. I certainly read something about that
8 in connection with this report.

9 **Q. Let's look at the first question:**

10 **"Whether the reports of prominent securities**
11 **analysts can have a material effect on share**
12 **prices in an efficient market."**

13 **Is that an empirical question?**

14 A. It's partly empirical and partly I
15 suppose legal, what a reasonable investor
16 consider.

17 **Q. And do you have any expertise on what**
18 **a reasonable investor would consider?**

19 A. I think common sense suggests that
20 any report that results in a significant
21 movement in share prices would be important to a
22 reasonable investor.

23 **Q. Do you have more expertise on that**
24 **common sense, on your common sense understanding**
25 **that you just articulated?**

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1 R. Kraakman

2 **Q. I'm not asking whether it's correct**
3 **or not, I'm asking what you did to reach your**
4 **conclusion on that question.**

5 MR. FOX: Well, I think that's
6 actually a different question than you
7 asked the first time.

8 MR. SCHWARTZ: Well, ultimately but
9 let me ask that question.

10 MR. FOX: Okay. Because I think your
11 first question was whether he did any
12 empirical research --

13 MR. SCHWARTZ: Well, right.

14 BY MR. SCHWARTZ:

15 **Q. And your answer to that question was**
16 **that you did not.**

17 A. I did not.

18 **Q. So my next question then is whether**
19 **-- is if you did not do any empirical research**
20 **to answer this empirical question, what did you**
21 **do to form your opinion on this question?**

22 A. Well, I think all of my reading in
23 financial economics supports the conclusion,
24 it's probably definitional too, that an
25 efficient market, and we all agree the market in

1 R. Kraakman
2 AOL Time Warner was an efficient market, reacts
3 almost, almost instantaneously to public
4 information is well understood. I think that's
5 simply, that's simply a given out there in the
6 world of financial economics and there is a huge
7 amount of literature out there that supports
8 that proposition.

9 **Q. So is it fair to say that your**
10 **opinion to the third question, the opinion you**
11 **reached as to this third question, you're**
12 **essentially confirming that a definition that is**
13 **well understood is in fact correct? Is that**
14 **fair to say?**

15 MR. FOX: Objection.

16 A. It's a little more than a definition,
17 but yes. It's -- I mean you can't make
18 arbitrage profits on public information. It's
19 reflected very rapidly in share price. That's
20 based on just a mountain of research out there.

21 **Q. And that's all part of the definition**
22 **of what it means for there to be an efficient**
23 **market, correct?**

24 A. That's part of the definition.

25 **Q. And your opinion in this third**

1 **R. Kraakman**
2 **question is that that definition is correct?**

3 A. That definition is essentially
4 correct, yes.

5 **Q. And to reach your conclusion on that,**
6 **you reviewed research that was conducted in.**
7 **Over a long period of time that appeared in the**
8 **financial academic journals.**

9 A. That's correct.

10 **Q. The last question: "Whether prices**
11 **in an efficient market necessarily react to**
12 **statements by analysts who, although capable of**
13 **moving market prices, merely repeat information**
14 **or misinformation that is already fully**
15 **disclosed to the market."**

16 A. Yes.

17 **Q. Is that an empirical question?**

18 A. Yes.

19 **Q. And again, did you do any studies or**
20 **tests to answer that empirical question?**

21 A. No, I did not.

22 **Q. So what did you do to form your**
23 **conclusion on this question?**

24 A. I recall having read some studies on
25 point, and I'd also like to point out that

1 R. Kraakman
2 that's entirely consistent with the preceding
3 assumption of what it means to have an efficient
4 market because if you simply reiterate
5 information that's already embedded in share
6 price, why should there be an effect? I mean
7 the market has already efficiently reflected
8 this information in the share price.

9 **Q. Now in the review of the studies that**
10 **you were talking about in connection with this**
11 **fourth question, do you feel like you canvassed**
12 **all of the relevant literature out there in**
13 **forming your opinion?**

14 A. I feel I read enough to feel
15 confident that I was stating the consensus view
16 of the literature.

17 **Q. How many articles did you read?**

18 A. I don't know. We can count them.
19 There are the seven or eight articles that I
20 cite here in working papers.

21 There's also a nice, a nice little
22 summary actually, quite a bit of empirical
23 research in Judge Gertner's opinion. Footnote
24 21 I believe.

25 And there was also a helpful summary

1 R. Kraakman
2 of some academic articles in Professor Stulz's
3 expert report.

4 **Q. Other than the articles that you've**
5 **cited in your report and the summary in Judge**
6 **Gertner's opinion and the summary in Professor**
7 **Stulz's report, did you read any other --**

8 A. Not in preparation for this report.

9 **Q. Did you read the articles that Judge**
10 **Gertner refers to to the extent that they're not**
11 **referenced in your report?**

12 A. No, I did not.

13 **Q. And did you read the articles that**
14 **Professor Stulz refers to to the extent that**
15 **they're not referenced in your report?**

16 A. No, I did not.

17 **Q. Do you view your opinion to question**
18 **D as also part of the definition of what it**
19 **means for there to be an efficient market?**

20 A. I don't think it's purely, purely
21 definitional. You know, it may be, but it
22 largely is, yes.

23 **Q. Setting aside for the moment your**
24 **answer to question B, your opinion on question**
25 **B, do your opinions on questions A, C and D add**

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1 **R. Kraakman**
2 **anything to the existing literature on market**
3 **efficiency?**
4 A. No, they don't.
5 MR. SCHWARTZ: Why don't we take a
6 break so that we can change the tape.
7 THE WITNESS: Okay.
8 THE VIDEOGRAPHER: The time is 11:18.
9 This is the end of tape labeled No. 1. We
10 are going off the record.
11 (Recess is taken.)
12 THE VIDEOGRAPHER: This is the start
13 of tape labeled No. 2. The time is 11:29.
14 We are back on the record.
15 BY MR. SCHWARTZ:
16 **Q. Professor Kraakman, could you turn to**
17 **paragraph 5 of your report, please?**
18 (Witness complies.)
19 A. Um-hmm.
20 **Q. Now you say in that paragraph,**
21 **"Numerous studies confirm the empirical finding**
22 **that analyst statements can have a significant**
23 **and permanent effect on the price of securities**
24 **in liquid public markets."**
25 A. Um-hmm.

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1 **R. Kraakman**
2 A. The time of the month.
3 **Q. Like beginning of the month or the**
4 **end of the month.**
5 A. I haven't read anything in particular
6 about that.
7 **Q. How about how accurate the analyst**
8 **had been in the past?**
9 A. Yes. At least one of -- the Chen,
10 one of the Chen, et al papers that I cite here
11 claims that this is a kind of Bayesian learning
12 process that goes on with investors, so past
13 accuracy is important and investors learn to
14 trust analysts who are more accurate over time.
15 **Q. How about how close in time the**
16 **analyst statement is to an earnings release by**
17 **the company?**
18 A. I believe that, I believe that one of
19 the papers mentioned, and I don't recall which
20 one, that statements that are very close to
21 earnings forecasts may not have as much of an
22 effect as statements that are far removed from
23 the forecast.
24 **Q. How about --**
25 A. Earnings announcements. I'm sorry.

1 R. Kraakman
2 **Q. Do you see that?**
3 **Do those studies confirm that all**
4 **analyst statements have an effect on the price**
5 **of securities all the time?**
6 A. No, they do not.
7 **Q. Do these articles discuss differing**
8 **factors that may affect whether an analyst**
9 **statement has an effect on the price of the**
10 **securities, of securities in the public markets?**
11 A. Yes, they do.
12 **Q. What are some of those factors?**
13 A. The analyst's professional reputation
14 as represented, for example, by whether they are
15 on the institutional -- their ranking on the
16 Institutional Investor All American Team, their
17 ranking by Greenwich, the number of times
18 they're mentioned in the press. That's the
19 Bonner, et al article. The status of the
20 investment bank that they're affiliated with.
21 The size of the issuing company. Those are some
22 of the considerations that seem to have an
23 effect.
24 **Q. How about the time of the month that**
25 **the report is issued?**

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1 R. Kraakman
2 I didn't mean forecast.
3 **Q. How about the number of analyst**
4 **reports that are issued at the same time? Does**
5 **the research talk about that?**
6 A. Yes, and the research suggests that
7 the effect of several analysts is qualitatively
8 different. If they release contemporaneous
9 reports, it's qualitatively different from the
10 release of a single analyst.
11 Now again, this is a hazy
12 recollection on my part. Just exactly how that
13 difference cuts I assume depends on the extent
14 to which the several analysts who release
15 contemporaneous reports have the same views or
16 differing views.
17 **Q. And do you know what article**
18 **discusses that issue?**
19 A. No.
20 **Q. How about the content of the**
21 **statement itself and whether it contains a**
22 **revision or reiteration? Does that affect**
23 **whether the statement has an effect on stock**
24 **price?**
25 A. I think the forecast, yes, if there

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1 R. Kraakman
2 is a revision of, you know, forecasted earnings
3 per share or there's a new price target or
4 there's most importantly perhaps a change in the
5 buy/sell recommendation, that's likely to have
6 an impact if it comes from an elite analyst.

7 **Q. And the size of the revision, how**
8 **significant a revision it is for an estimate of**
9 **rating, is that also a factor that the research**
10 **discusses?**

11 A. I'm sure it does but I'm not aware of
12 the particular article.

13 **Q. Is it fair to say that whether a**
14 **given analyst statement will impact a given**
15 **securities price depends on a lot of different**
16 **circumstances?**

17 A. I would say it's quite contextual,
18 yes, but I think there are some generalities one
19 can make and the literature does make.

20 **Q. Paragraph 5 also says that, "Other**
21 **research documents a relationship between price**
22 **response and analyst ability and reputation, and**
23 **between price response and reports issued by**
24 **more able or better-known analysts," correct?**

25 A. Um-hmm.

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1 R. Kraakman
2 contrast the All American Team analyst with the
3 lesser, the lesser reliance in the community or
4 the analysts with large numbers of mentions in
5 the press with analysts who have fewer mentions
6 in the press. One of the articles, the other
7 Chen article we talked about, analysts in
8 general, forecasts in general.

9 **Q. How about the Womack article that you**
10 **cite; does that deal with average analyst**
11 **effect?**

12 A. I believe, I believe it does not. I
13 believe, now I may be mistaken in my
14 recollection, it's been a while since I've
15 looked at that, but I believe that deals with
16 the research departments of, I don't know, 14
17 most prominent investment banks.

18 **Q. Would it surprise you if the Womack**
19 **article did deal with the average effect of**
20 **analyst statements on stock price?**

21 A. I believe that the effect that they
22 studied -- it would surprise me if it was all
23 analysts as opposed to a subset of analysts who
24 happen to be associated with prominent
25 investment banks because that's what I

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1 R. Kraakman
2 **Q. And it also says that "The**
3 **recommendations of analysts with 'celebrity**
4 **status,' as measured by media coverage affect**
5 **share prices significantly more than do those of**
6 **other analysts, even controlling for**
7 **professional reputation and the accuracy of past**
8 **recommendations."**

9 A. That is I believe the Bonner, et al
10 paper.

11 **Q. And generally the research you're**
12 **referring to in this paragraph, you're referring**
13 **to the specific articles that you cite --**

14 A. Yes.

15 **Q. -- in the footnotes.**

16 **Now does this research, does it**
17 **discuss the relationship between stock price**
18 **response and the statement of a particular**
19 **analyst or is it talking about average analyst**
20 **statements, the average effect of analyst**
21 **statements?**

22 A. Well, that depends on the article one
23 refers to. Not particular analysts by and
24 large, but analysts within a given class.

25 For example, the literature will

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1 R. Kraakman
2 recollect, but I may be mistaken.

3 **Q. But your recollection is that it**
4 **deals with a subset, not the effect of an**
5 **individual analyst's statements on stock prices.**

6 A. Yes. I believe the finding is a
7 large and permanent effect on stock prices on
8 average from the subset of analysts.

9 **Q. And do you recall what that was a**
10 **response to, what that effect was in response to**
11 **that Womack was setting?**

12 A. It may have been buy/sell, I don't
13 recall, but it was certainly one of the summary,
14 summary measures rather than the report as a
15 whole. Buy/sell recommendations.

16 **Q. Do you recall whether it was a change**
17 **from the highest recommendation to the lowest**
18 **recommendation or from the lowest recommendation**
19 **to the highest recommendation?**

20 A. No, I don't.

21 **Q. You cite an article by Professors**
22 **Fisch and Sale that refer to the analysts as**
23 **"the star of the show in competition among**
24 **investment banks for underwriting business."**

25 A. Um-hmm.

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1 R. Kraakman

2 **Q. Do those professors conduct any**
3 **empirical tests in that article? Do they**
4 **describe any empirical tests that they've**
5 **conducted that demonstrate the effect of**
6 **research analyst statements on stock prices?**

7 A. No, they did not conduct their own
8 empirical studies.

9 **Q. Paragraph 6 you talk about the**
10 **indicia of elite status for research analysts**
11 **and you also use the term "influential**
12 **professional elite."**

13 A. Um-hmm.

14 **Q. Do you mean the same thing when you**
15 **say an influential analyst and an elite analyst?**

16 A. Yes.

17 **Q. And in your view what does "elite**
18 **status" mean?**

19 A. Well, a listing as a top analyst by
20 Institutional Investor or by Greenwich or an
21 affiliation with a major investment banking
22 firm. The same criteria that I referred to
23 earlier in the report.

24 **Q. So the three criteria I believe**
25 **you've identified are affiliation with a**

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1 R. Kraakman

2 Now what I don't remember is exactly
3 the time frame, you know, which is probably
4 important here. 56 mentions within a lifetime
5 or, you know, year? I assume it's in the course
6 of a study. It must have been a year or two.
7 Something like that.

8 MR. SCHWARTZ: Can you mark this as
9 Kraakman Exhibit 2, please.

10 (Defendant's Exhibit Kraakman 2,
11 Document entitled "Investor Reaction to
12 Celebrity Analysts: The Case of Earnings
13 Forecast Revisions" by Sarah E. Bonner,
14 marked for identification, as of this
15 date.)

16 BY MR. SCHWARTZ:

17 **Q. Have you seen this article before?**

18 A. Yes. This is the Bonner piece so
19 it's two years.

20 **Q. Now do you know whether this article**
21 **was ever published?**

22 A. I don't know whether it was ever
23 published.

24 **Q. Do you recall whether you checked to**
25 **see whether it was ever published?**

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1 R. Kraakman

2 **prominent investment bank, press coverage and**
3 **institutional investor ranking. Is that fair?**

4 A. Yeah. A Greenwich ranking, yeah.

5 **Q. Are you aware of any studies that**
6 **look at the effect of Greenwich rankings on**
7 **analyst --**

8 A. No.

9 **Q. -- effects?**

10 A. No.

11 **Q. Let's talk about press coverage.**

12 **How many appearances in the press is**
13 **required for an analyst to meet the elite**
14 **status?**

15 A. Well, yeah, the Bonner piece is
16 pretty interesting in that respect because it
17 suggests that there's not a linear relationship
18 between number of mentions and effect on share
19 prices, that at some point over the term of the
20 study it peaks and plateaus from that point on.
21 I mean that's just a curious, a curious effect,
22 a kind of non-linear relationship like that.

23 How many mentions? I don't know.

24 The number 56 comes to mind. I'm not sure but I
25 think that's the number mentioned as a cutoff.

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1 R. Kraakman

2 A. I did not check.

3 **Q. Could you turn to page 11 of the**
4 **article, please.**

5 (Witness complies.)

6 A. Um-hmm.

7 **Q. So do you see where it says, "The**
8 **sample analysts have a mean of 48. -- it's in**
9 **the top paragraph about halfway down, "Sample**
10 **analysts have a mean of 48.67 and a median of 20**
11 **media appearances during the year."**

12 A. Um-hmm.

13 **Q. So do you understand that to mean**
14 **that Bonner found in her study that analysts,**
15 **that there was a median of 20 appearances in all**
16 **forms of media during --**

17 A. Yes.

18 **Q. -- the year of her study?**

19 A. Right.

20 **Q. And that's one year, not two years?**

21 A. Yes. That's what she claims here.

22 **Q. So would you agree that in order to**
23 **be a celebrity analyst that Bonner talks about,**
24 **the analyst probably has to have more than 20**
25 **media appearances if that's the median?**

1 **R. Kraakman**
2 A. If that's the median, sure.
3 **Q. Your answer to that is yes?**
4 A. Yes.
5 **Q. Incidentally, do you know how certain**
6 **Bonner was about the results that she and her**
7 **coauthors reached in this paper?**
8 MR. FOX: Objection.
9 A. How certain? I assume she wouldn't
10 have put this out if she weren't reasonably
11 certain of that result.
12 **Q. Do you recall her expressing any**
13 **caveats about her findings?**
14 A. I'm sure there are. I don't recall
15 what they were.
16 **Q. Would you turn to page 2 of the**
17 **article, please.**
18 (Witness complies.)
19 **Q. Towards the end of that first**
20 **paragraph she writes, "However, we are unable to**
21 **rule out that our measure of celebrity media**
22 **coverage is either correlated with a measurement**
23 **error in our proxies for forecast performance**
24 **and/or correlated with other unexamined**
25 **dimensions of forecast performance, thus an**

1 **R. Kraakman**
2 **rule out that the effect that she finds that's**
3 **attached to celebrity status may in fact be**
4 **attributable to something else?**
5 A. That's what she saying.
6 **Q. That's a pretty significant caveat,**
7 **don't you think?**
8 A. I think it's entirely standard for
9 empirical work like this.
10 **Q. Okay. But being standard means**
11 **that -- strike that.**
12 **Okay. Let's go back to paragraph 6**
13 **of your --**
14 A. Of my report.
15 **Q. Of your report.**
16 **Just before we go on, you just said**
17 **that a caveat like that is standard.**
18 **In other research papers that you've**
19 **read on the effect of research analyst reports**
20 **on stock price, do you recall seeing caveats**
21 **like that?**
22 A. I can't recall offhand in the context
23 of papers on analyst reports, but I can recall
24 instances in other finance reports where people
25 say, you know, we can't rule out explanation X,

1 **R. Kraakman**
2 **alternative interpretation of our results is**
3 **that consistent with prior work in the area,**
4 **market participants react more strongly to**
5 **forecast revisions issued by analysts with**
6 **superior performance."**
7 **Do you see where she says that?**
8 A. No, I don't, no. What page is it on
9 again?
10 **Q. Page 2 of the article.**
11 A. Yes. And which --
12 **Q. It's at the end of the first**
13 **paragraph.**
14 (Document review.)
15 **Q. It's on the numbered page 2.**
16 MR. FOX: I would just say while
17 Professor Kraakman is reading that, that
18 you ought to feel free to examine the
19 document that Mr. Schwartz has given to you
20 and if you want to read it more in context,
21 I'm sure Mr. Schwartz wouldn't deny you the
22 opportunity to do that, or maybe he would.
23 (Document review.)
24 A. Yes.
25 **Q. So is she saying that she couldn't**

1 R. Kraakman
2 Y or Z.
3 And I think that's simply, that's
4 simply a good, that's simply good research
5 practice, good science to be up front about
6 hypotheses you can't rule out. It's very rare
7 that you can rule out every other possible
8 explanation for the finding you come up with.
9 **Q. Other than the Bonner piece, are you**
10 **aware of any other articles that correlate**
11 **celebrity status with effect on stock price?**
12 A. Well, it depends on how you define
13 "celebrity status." On the Stickel piece --
14 **Q. Well, let's leave aside the Stickel**
15 **piece for a second, but celebrity status as**
16 **measured by media appearances.**
17 A. No. That's the only one that I know
18 of.
19 **Q. Now going back to the three, the**
20 **three indicia, the lead status you refer to, is**
21 **any one of them more important than the other in**
22 **your view?**
23 A. I have no view on that.
24 **Q. Did you attempt to reach a conclusion**
25 **on that question?**

1 **R. Kraakman**
2 A. The three are highly intercorrelated
3 is my impression. The elite status,
4 professional recognition in affiliation with a
5 major investment banking firm. For example,
6 being on the, one place or another on the All
7 American Investor team, II's All American
8 Investor team in affiliation with a prominent
9 investment bank are pretty heavily correlated,
10 but I would... So...
11 **Q. So is your answer you didn't attempt**
12 **to determine which of these factors is**
13 **relatively more important than the others?**
14 A. That's correct.
15 **Q. You said that the three factors in**
16 **your view are highly correlated with each other.**
17 **Are most research analysts at**
18 **prominent investment banks II ranked on the All**
19 **American team?**
20 A. No.
21 **Q. And are most research analysts at**
22 **prominent investment banks celebrities by**
23 **measure of their media appearances?**
24 A. I suspect not.
25 **Q. So is it fair to say that affiliation**

1 **R. Kraakman**
2 **mean by that?**
3 A. Precisely what I say.
4 **Q. So that they have the indicia of --**
5 A. Right.
6 **Q. That you talk about.**
7 **So what happens if all of the indicia**
8 **don't point in the same direction?**
9 **So, for example, what if the analyst**
10 **was associated with a prominent firm but not II**
11 **ranked and not a celebrity analyst? Would you**
12 **believe that that analyst was part of the elite?**
13 A. I wouldn't be confident.
14 **Q. And would the answer be true with**
15 **respect to any of the -- any one indicium of**
16 **eliteness?**
17 A. No. I think you rightly suggested a
18 moment ago that probably professional prominence
19 and a high incidence of mention in the press are
20 stronger correlates of elite status but...
21 **Q. So affiliation with a prominent**
22 **investment firm isn't a very good indicator of**
23 **elite status.**
24 MR. FOX: Objection.
25 A. It's probably noisier than the

1 **R. Kraakman**
2 **with a prominent investment firm is less**
3 **correlated with the other two indicia of elite**
4 **status?**
5 MR. FOX: Objection.
6 A. Now that you mention it, it seems
7 plausible.
8 **Q. Paragraph 6 you write, "Particularly**
9 **when these attributes all point in the same**
10 **direction, they suggest strongly than an analyst**
11 **is a member of the influential minority of**
12 **analysts rather than of the less prominent**
13 **majority of analysts who may not move share**
14 **prices through their reports and buy/sell**
15 **recommendations."**
16 A. Um-hmm.
17 **Q. Now is it your view that**
18 **non-prominent, non-elite analysts for simplicity**
19 **sake, that their opinions don't move share**
20 **prices?**
21 MR. FOX: Objection.
22 A. I haven't seen in the literature that
23 I reviewed, strong and consistent evidence that
24 they do move share prices.
25 **Q. And by "elite analysts," what do you**

1 R. Kraakman
2 others.
3 **Q. Are you familiar with a firm**
4 **called -- let me give you an example of**
5 **something.**
6 **Are you familiar with a firm called**
7 **Robertson Stephens?**
8 A. It's an investment bank I believe.
9 **Q. Do you know whether they're still**
10 **around?**
11 A. I don't.
12 **Q. So if I'm understanding what we've**
13 **been talking about correctly, would it -- well,**
14 **would you regard Robertson Stephens as a**
15 **prominent investment bank?**
16 A. Certainly not on the -- not as high
17 on the prominent scale, if you will, as Credit
18 Suisse or Merrill Lynch or Solomon Brothers, the
19 big ones.
20 **Q. Okay.**
21 A. Goldman Sachs. I guess I shouldn't
22 forget them, huh?
23 **Q. So knowing only that an analyst**
24 **worked at Robertson Stephens, that wouldn't**
25 **allow you to conclude that he or she was an**

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1 **R. Kraakman**
2 **elite analyst.**
3 A. Correct.
4 **Q. Do you know whether Robertson**
5 **Stephens issued research on AOL Time Warner**
6 **during the class period in this case?**
7 A. It wouldn't surprise me if they did.
8 **Q. I'll represent that they did.**
9 A. Okay.
10 **Q. And I will represent that there were**
11 **two analysts at Robertson Stephens who covered**
12 **AOL during the class period named Lowell Singer**
13 **and Michael Sabulla?**
14 A. Okay.
15 **Q. Have you ever heard of them?**
16 A. No.
17 **Q. So they're probably not celebrities**
18 **either.**
19 MR. FOX: Objection.
20 A. Gee, I didn't count up the number of
21 press mentions or...
22 MR. FOX: You're asking if he has an
23 opinion as to whether those analysts are
24 celebrities?
25 MR. SCHWARTZ: I'm asking whether in

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1 **R. Kraakman**
2 I mean you --
3 A. I have no opinion on these analysts.
4 **Q. In general would you believe that**
5 **five press appearances would satisfy the**
6 **criteria for celebrity status as defined by**
7 **Bonner?**
8 MR. FOX: Objection.
9 A. Five seems low but...
10 **Q. If I remind you that the median that**
11 **he found was 20, would that change your answer?**
12 A. What was that with respect to a
13 particular firm or was it -- can you refresh my
14 memory?
15 **Q. Yes, that was --**
16 A. Or was that with respect to every
17 company that the analyst covered?
18 **Q. That's with respect -- with the**
19 **analyst name and the firm of the analyst, so in**
20 **this case it would be these analysts from**
21 **Robertson Stephens.**
22 A. Well, that wasn't my question.
23 My question was do we count press
24 mentions with respect to a particular issuer or
25 with respect to the universe of issuers?

1 **R. Kraakman**
2 his view those analysts meet his criteria
3 for being celebrities as an indicium of a
4 leading analyst.
5 MR. FOX: If he studied those
6 analysts first.
7 A. I have not studied those analysts. I
8 do not have a view on their status.
9 **Q. I will represent, because I have**
10 **looked at their press appearances, and I will**
11 **represent that Mr. Singer appeared in the press**
12 **relating to America Online five times during the**
13 **year-and-a-half of the class period and that**
14 **Mr. Sabulla appeared in the press in connection**
15 **with AOL Time Warner no times during the**
16 **year-and-a-half of the class period.**
17 **So based on that information, would**
18 **you believe that they were influential?**
19 MR. FOX: Objection.
20 You know, the witness has not
21 rendered an opinion on these analysts.
22 MR. GESSER: Why don't you just make
23 your objection.
24 MR. FOX: That is my objection.
25 You may answer if you have an opin --

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1 **R. Kraakman**
2 **Q. Bonner looked at -- what Bonner**
3 **looked at was the name of the analyst in**
4 **connection with the firm of the analyst.**
5 A. So but you are not -- I mean so this
6 is kind of an apples and orange comparison,
7 right?
8 **Q. They are not a one-to-one comparison.**
9 A. Yes.
10 So I guess I can't use Bonner to say
11 anything about the status of these particular
12 analysts.
13 **Q. So you think it's -- do you think**
14 **it's plausible that these analysts would be**
15 **mentioned very few or no times in connection**
16 **with one of the companies that they covered, but**
17 **many times in connection with -- more than 20**
18 **times in connection with all other companies**
19 **that they covered?**
20 MR. FOX: Objection.
21 A. It's possible.
22 **Q. But you have no way of --**
23 A. I have no way of determining that.
24 **Q. Of determining that.**
25 **Okay. I'll also represent that**

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1 **R. Kraakman**
2 **Singer and Sabulla weren't II ranked analysts.**
3 **So based on all you know about them,**
4 **do you have a view as to whether they would meet**
5 **your definition of elite status?**
6 MR. FOX: Objection.
7 A. Well, the caveat of course is that I
8 don't know how many times they were mentioned in
9 their investment banking firm, but certainly my
10 priori would be that most likely they weren't
11 elite.
12 **Q. In paragraph 7 you conclude that,**
13 **"Jamie Kiggen and Laura Martin qualify as**
14 **influential analysts on the basis of the**
15 **characteristics singled out by the literature."**
16 A. That's right.
17 **Q. And when you call them "influential**
18 **analysts," you mean that they have the indicia**
19 **of being elite; is that correct?**
20 A. Yes.
21 **Q. Now in your view, as elite analysts**
22 **-- actually, strike that.**
23 **Okay. In support of your opinion**
24 **that they qualify as elite analysts, you know**
25 **that they were both employed by Credit Suisse, a**

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1 **R. Kraakman**
2 **American Research Team in sectors for America**
3 **Online Time Warner; is that correct?**
4 A. That's correct.
5 **Q. Now does it matter to your conclusion**
6 **that neither Mr. Kiggen nor Ms. Martin were**
7 **ranked number one by Institutional Investor for**
8 **either 2000 or 2001?**
9 A. I know it matters in the Stickel
10 article but it doesn't really matter to my
11 conclusions. I mean Kiggen, as I recall, was
12 also up there. He was number one I think in the
13 Greenwich. Previously he had been number two in
14 II for a couple of years running straight. I
15 certainly, I certainly would think of him as an
16 elite analyst given that he's, he's been
17 mentioned for a number of years running, as has
18 Martin, as one of the second or third team
19 members on AOL, this rock star characterization,
20 his employment by Credit Suisse. I haven't done
21 a, I haven't done a literature count on the
22 number of times he was mentioned in conjunction
23 with AOL Time Warner, but I would be interested
24 in knowing that and my guess would be it would
25 be a little over 20.

1 **R. Kraakman**
2 **prominent investment bank?**
3 A. Correct.
4 **Q. But knowing only that they were**
5 **employed by Credit Suisse, that would not allow**
6 **you to conclude that they were elite; is that**
7 **correct?**
8 A. It would make it less likely knowing
9 only that. I would want to know whether they
10 were on II's All American team, were they
11 mentioned, were they were runner-ups, you know,
12 what about Greenwich.
13 I take Quattrone's phrase here is
14 suggesting an elite analyst, "a rock star
15 Internet analyst."
16 **Q. We'll get to Mr. Quattrone's**
17 **statement in a moment, but I'm just asking you**
18 **about, I understand you would want to know more,**
19 **but if let's say you couldn't know more, the**
20 **only information you had was that they worked at**
21 **Credit Suisse, would that allow you to say that**
22 **they were elite analysts?**
23 A. No.
24 **Q. Now you also mentioned that they were**
25 **both listed among Institutional Investor's All**

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1 R. Kraakman
2 **Q. Okay. Well, since we mentioned it --**
3 A. Oh, you have...
4 MR. SCHWARTZ: Can you mark this as
5 Exhibit 3.
6 (Defendant's Exhibit Kraakman 3,
7 Declaration of René M. Stulz, marked for
8 identification, as of this date.)
9 A. What are we looking at here?
10 I don't believe I've seen this
11 before.
12 **Q. Well, do you know what it is?**
13 A. Well, it seems to be the declaration
14 of Professor Stulz. It's mentioned in his
15 expert report but I've never received a copy of
16 it.
17 **Q. Do you know if it's mentioned in your**
18 **expert report?**
19 A. I don't believe so.
20 **Q. Why don't you look at Footnote 2 and**
21 **see if that refreshes your recollection.**
22 (Document review.)
23 A. Well, Footnote 2 refers to the expert
24 report, not the declaration.
25 **Q. Well, I mean you wrote your expert**

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1 **R. Kraakman**
2 **report, right? I mean that's what you testified**
3 **to earlier.**
4 A. Yes.
5 **Q. And you refer to it here as dated**
6 **April 26, 2007, correct?**
7 A. I guess so.
8 **Q. And on page 40 of the exhibit I just**
9 **handed you it says that it's executed on April**
10 **26th, 2007, right?**
11 **(Document review.)**
12 A. It says it was filed on April 27,
13 2007.
14 **Q. I asked you when it was executed, on**
15 **page 40.**
16 A. Page 40.
17 **(Document review.)**
18 A. April 26, 2007, yes.
19 **Q. So would you agree that this is**
20 **likely the document you were referring to in**
21 **Footnote 2 of your expert report?**
22 MR. FOX: Objection. I mean it
23 clearly says what it is in Footnote 2 and
24 it says Exhibit 38 --
25 MR. GESSER: Just make your

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1 **R. Kraakman**
2 A. I have never seen this document.
3 **Q. And you have no idea what document**
4 **you're referring to in Footnote 2.**
5 A. Yeah. It was entitled the expert
6 report and it's the same document essentially
7 with minor revisions that was submitted to me a
8 little while ago.
9 I don't know. Do we have a copy
10 of -- I mean do you have another -- do you have
11 a document called the expert report or the
12 revised expert report?
13 **Q. Did you see an expert report of**
14 **Professor Stulz dated May 1st, 2008?**
15 A. Maybe. Was that the revised expert
16 report?
17 **Q. Did you see a corrected Stulz report**
18 **dated in July of 2008?**
19 A. I did.
20 **Q. Now you refer to Exhibit 3A, to the**
21 **expert report of René M. Stulz dated April 26th,**
22 **2007 in your Footnote 2; is that correct?**
23 A. It looks that way. It looks as if...
24 **(Document review.)**
25 A. You know, I can't -- I refer to the

1 R. Kraakman
2 objection. Don't testify.
3 MR. FOX: Well --
4 MR. GESSER: Just make your
5 objection.
6 MR. FOX: -- I'm not. I'm just
7 telling you what it says.
8 MR. SCHWARTZ: Well, he's the one who
9 wrote the report.
10 MR. FOX: I understand he wrote the
11 report but... Whatever.
12 BY MR. SCHWARTZ:
13 **Q. Professor Kraakman, are you aware of**
14 **another document called the expert report of**
15 **René M. Stulz that's dated April 26, 2007 that's**
16 **different from the declaration of René M. Stulz**
17 **that's dated April 26, 2007?**
18 A. I don't -- I can't speak to, I can't
19 speak to the date.
20 I can tell you that I read something
21 that was -- I read it in two forms. There was
22 the expert report and there was the revised
23 expert report and it was not this document.
24 **Q. Okay. So you've never seen this**
25 **document.**

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1 R. Kraakman
2 expert report. If there was no expert report,
3 then I obviously made a mistake or...
4 **Q. I'm just asking you, this refers to**
5 **an Exhibit 3A, correct, in Footnote 2 of your**
6 **report?**
7 **(Document review.)**
8 A. Yes.
9 **Q. Could you flip to Exhibit 3A of the**
10 **Stulz declaration?**
11 A. Where is Exhibit 3A?
12 **Q. It's towards the back. It's after**
13 **page 41, it's about the third or fourth page.**
14 **(Document review.)**
15 **Q. Have you seen this exhibit before?**
16 MR. FOX: Let's just make sure he's
17 on the right page.
18 MR. SCHWARTZ: Sure. Okay.
19 THE WITNESS: Yeah.
20 MR. SCHWARTZ: Yeah, absolutely.
21 Please.
22 THE WITNESS: Yeah.
23 MR. FOX: Okay. 3A.
24 THE WITNESS: Right. Right. This is
25 the II. This is the list of II...

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1 R. Kraakman
 2 BY MR. SCHWARTZ:
 3 **Q. So you have seen this exhibit before.**
 4 A. I have seen this exhibit before.
 5 **Q. Okay. In light of that, do you**
 6 **believe that your reference to the expert report**
 7 **of René M. Stulz in Exhibit -- in Footnote 2 to**
 8 **your expert report is likely referring to this**
 9 **document?**
 10 A. I have seen a -- I have seen this
 11 page but not the remainder of the declaration.
 12 **Q. Okay. Can you flip to Exhibit 3B of**
 13 **the Stulz report, please? The Stulz declaration**
 14 **I should say.**
 15 **Please take a look at it and let me**
 16 **know when you've finished.**
 17 **(Document review.)**
 18 A. Yes.
 19 **Q. Okay.**
 20 A. Okay.
 21 **Q. Now I believe you said before that**
 22 **you expected Mr. Kiggen to have well over 20**
 23 **press mentions in connection with AOL.**
 24 A. No, in connection with Credit Suisse.
 25 **Q. Do you see the other analysts who are**

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1 R. Kraakman
 2 was out there in the press a lot, he, based on
 3 the Bonner paper again, he would be more likely
 4 to have a significant influence on, on AOL Time
 5 Warner stock price, yeah.
 6 **Q. Even if he was never quoted or rarely**
 7 **quoted in connection with AOL's stock price,**
 8 **that would still be your opinion.**
 9 MR. FOX: Objection.
 10 A. Well, the more mentions, the better
 11 seems to be the message of the Bonner article.
 12 **Q. Well, do you think --**
 13 A. And again, this doesn't go back to
 14 his earlier, his earlier mentions before he
 15 joined Credit Suisse, right, when I believe he
 16 was on the second team with respect to AOL.
 17 **Q. Does Bonner talk about prior mentions**
 18 **in her article, mentions before the period of**
 19 **study?**
 20 A. No.
 21 **Q. Do you think that all mentions are**
 22 **equal? If someone is just mentioned in the**
 23 **press in connection with Credit Suisse, it's the**
 24 **same as if he's mentioned or she is mentioned in**
 25 **the past in connection with a company that she**

1 **R. Kraakman**
 2 **listed here and their number of press mentions?**
 3 A. Well, this is in connection with AOL,
 4 right?
 5 **Q. It is in connection with AOL, but I'm**
 6 **asking you whether you see the other analysts,**
 7 **the number of press mentions in connection with**
 8 **AOL.**
 9 A. Um-hmm.
 10 **Q. And would you agree that Mr. Kiggen**
 11 **has -- that Mr. Kiggen's three press mentions in**
 12 **connection with AOL are not particularly high in**
 13 **comparison to some of the other analysts?**
 14 MR. FOX: Objection.
 15 A. To some of the other analysts, but
 16 again, this doesn't go to Bonner's paper because
 17 it's only in connection with AOL. It's not in
 18 connection with Credit Suisse, right?
 19 **Q. So is it your view that Mr. Kiggen**
 20 **would be more likely to have an effect on AOL**
 21 **stock price if he was mentioned many times in**
 22 **connection with Credit Suisse but very few times**
 23 **in America Online?**
 24 MR. FOX: Objection.
 25 A. It would be my view that if his name

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1 **R. Kraakman**
 2 **actually covers or he actually covers in**
 3 **connection with Credit Suisse?**
 4 A. It's plausible that they're not
 5 equal.
 6 **Q. Now when I asked you to -- you can**
 7 **put away the Stulz declaration for a minute.**
 8 **(Witness complies.)**
 9 **Q. Now when I asked you earlier whether**
 10 **it mattered to your view that Mr. Kiggen and**
 11 **Ms. Martin were influential analysts, when I**
 12 **asked you whether it mattered that they were not**
 13 **ranked first or second team All American by**
 14 **Institutional Investor, you said that you were**
 15 **aware that it matters to Stickel.**
 16 A. Um-hmm.
 17 **Q. What do you mean by that?**
 18 A. Well, as I recall, he found that the
 19 influence of analyst reports seemed to have been
 20 substantially greater for first team and second
 21 team and third team runners-up.
 22 **Q. Do you recall whether he found that**
 23 **third team and runner-up analysts had any more**
 24 **effect on stock price than unranked analysts?**
 25 A. I believe in his particular case, I

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Page 103

1 R. Kraakman
2 think his finding was that they didn't. It was
3 some bizarre result with respect to runner-ups
4 that was inexplicable I seem to remember. So
5 going on that basis alone...

6 **Q. Sorry. Going on that basis alone**
7 **what?**

8 A. Strike that.

9 As I say, I don't think these -- I
10 don't think the II mentions are the only
11 indicia. I think this has got to be highly
12 contextual and in affiliation with Credit
13 Suisse.

14 **Q. Well, let's talk about those I guess.**

15 MR. FOX: Were you finished with your
16 answer?

17 BY MR. SCHWARTZ:

18 **Q. I'm sorry. I didn't mean to cut you**
19 **off.**

20 A. Well, that and Quattrone's views of
21 who this guy was. I assume he received quite a
22 bit of past coverage, even if Bonner doesn't
23 look at that, when he was with his prior
24 investment bank. This guy appears to have been,
25 based on the emails I looked at, pretty hot, a

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1 R. Kraakman
2 **chart had 31, so in comparison with that, not**
3 **very many, correct?**

4 A. Right.

5 **Q. We discussed their II rankings and as**
6 **you noted in Stickel's article, second -- sorry,**
7 **13 and runner-up analysts aren't associated with**
8 **greater stock price effect; is that correct?**

9 A. That's correct.

10 **Q. And other than Stickel's article, did**
11 **you review any articles that talked about the**
12 **different rankings in II and what the effects of**
13 **each ranking were?**

14 A. No, I did not.

15 **Q. And you didn't conduct any of your**
16 **own research to determine that as an empirical**
17 **matter.**

18 A. No, I did not.

19 **Q. So you've mentioned a couple of times**
20 **Frank Quattrone's emails and your reference to**
21 **them in this article.**

22 Now do Mr. Quattrone's views
23 establish as an empirical matter that Jamie
24 Kiggen had an effect on AOL stock price?

25 A. Well, first of all, we haven't -- I

1 R. Kraakman
2 pretty hot, pretty hot fellow.

3 **Q. Well, let's talk about the indicia**
4 **you identify of influence in paragraph 7.**

5 We talked about their affiliation
6 with Credit Suisse and you said knowing that
7 alone, you wouldn't able to say that they were
8 influential analysts.

9 A. Right.

10 **Q. We talked about press appearances and**
11 **you said that you don't have data from which to**
12 **make that assessment, but that you assume that**
13 **they have a lot of press mentions in connection**
14 **with Credit Suisse; is that correct?**

15 A. A lot of press mentions in connection
16 with Credit Suisse, that's correct.

17 **Q. We looked at their press mentions in**
18 **connection with AOL and saw that there weren't**
19 **very many; is that also correct?**

20 A. Yes.

21 MR. FOX: Objection.

22 A. Well, there are three. Not as many
23 as some of the other analysts that you had on...

24 **Q. Well, the top analysts, the analysts**
25 **with the most number of press mentions on that**

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1 R. Kraakman
2 haven't said that Kiggen's reports did have an
3 effect on AOL stock price. I mean the issue was
4 would they would have had -- would they have had
5 an effect had he been entirely truthful.

6 But I do think that Frank Quattrone's
7 view of his abilities is evidentiary. I think
8 it points to a high reputational status in the
9 analyst community and perhaps among
10 institutional investors.

11 **Q. Are you aware of any research that**
12 **that has looked at the effect of Mr. Quattrone's**
13 **views on an analyst's ability to affect stock**
14 **price?**

15 A. No.

16 **Q. Do you suspect that no such research**
17 **exists?**

18 A. I suspect that's true, but I suspect
19 that probably Mr. Quattrone is a pretty good
20 judge of horse flesh out there and he's putting
21 his money on his beliefs so...

22 **Q. Do you think Mr. Quattrone had any**
23 **motivation for pumping up the reputation of**
24 **Credit Suisse research analysts?**

25 MR. FOX: Objection.

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Page 107

1 R. Kraakman
 2 BY MR. SCHWARTZ:
 3 **Q. Can you think of any motivation he**
 4 **might have had?**
 5 MR. FOX: It calls for speculation.
 6 A. I don't know what his, what his
 7 motivations were.
 8 **Q. Well, you mentioned -- you cited**
 9 **Professors Fisch and Sale before. You say that,**
 10 **"Research analysts are the star of the show in**
 11 **competition among investment banks for**
 12 **underwriting business."**
 13 **Do you think attempting to attract**
 14 **underwriting business could have been a reason**
 15 **why Frank Quattrone would have had positive**
 16 **things to say about Credit Suisse research**
 17 **analysts?**
 18 A. Possibly, but he said this before, as
 19 I recall, Kiggen was hired.
 20 **Q. Do Mr. Quattrone's views, do they**
 21 **make it any more likely that Mr. Kiggen in fact**
 22 **had the ability to affect stock price?**
 23 A. Yes, I think they do. They are
 24 evidentiary. I mean they're not among the holy
 25 trinity of three factors that I mentioned in

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1 R. Kraakman
 2 They are additive.
 3 **Q. Okay. What do you base that on?**
 4 A. My belief that Mr. Quattrone was a
 5 central executive, head of all research at
 6 Credit Suisse and it was in his interest to hire
 7 the best.
 8 **Q. And are you bringing any expertise to**
 9 **that opinion?**
 10 A. Just common sense.
 11 **Q. Are you aware that Mr. Quattrone is a**
 12 **defendant in this case?**
 13 A. Yes.
 14 **Q. Let's look at paragraph 8 of your**
 15 **report.**
 16 A. All right.
 17 **Q. You say, "In my opinion there is no**
 18 **policy or doctrinal reason for distinguishing**
 19 **between the statements of issuers and**
 20 **influential analysts for purposes of**
 21 **fraud-on-the-market theory."**
 22 A. I do.
 23 **Q. Okay. And why do you believe that?**
 24 A. Which?
 25 **Q. Well, give me the policy reasons.**

1 R. Kraakman
 2 earlier paragraphs of the report, but I think in
 3 context they point to reputational positions of
 4 Mr. Kiggen.
 5 **Q. So in your view Mr. Quattrone's views**
 6 **are a proxy for Mr. Kiggen's professional**
 7 **prominence.**
 8 A. Well, they're evidentiary, yeah.
 9 **Q. So they speak to but they don't**
 10 **establish his professional prominence.**
 11 A. That's correct.
 12 **Q. And they don't, and Mr. Quattrone's**
 13 **views are not additive as an indicium of elite**
 14 **status to Mr. Kiggen's professional prominence?**
 15 MR. FOX: Objection.
 16 A. I would take, I would take the
 17 statement to be additive to the other criteria
 18 of professional prominence, yes.
 19 **Q. You say that -- sorry. I just want**
 20 **to clarify what you said just now.**
 21 **Mr. Quattrone's views are not**
 22 **additive to the other indicia of professional**
 23 **prominence?**
 24 A. No. On the contrary. I think they
 25 are -- no, I meant to say exactly the opposite.

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1 **R. Kraakman**
 2 A. Because I believe that influential
 3 analysts are able to distort market prices
 4 through misrepresentation of their views just as
 5 issuers are able to distort market prices.
 6 **Q. Do you believe that most statements**
 7 **by issuers affect their stock prices?**
 8 A. I haven't, I haven't the vaguest
 9 idea. I would imagine there are many statements
 10 by issuers but I haven't the vaguest idea.
 11 Does every press release an issuer
 12 makes affect stock prices? Are they
 13 anticipated? I don't know.
 14 **Q. How about most earnings releases? Do**
 15 **you think most earnings releases by an issuer**
 16 **affect the stock price?**
 17 A. It depends on how well they're
 18 anticipated by the market.
 19 **Q. I understand what it depends on, but**
 20 **I'm asking if you think that most of the time**
 21 **when an issuer issues an earnings release, it**
 22 **affects its stock price.**
 23 A. I don't know.
 24 **Q. Do you think most --**
 25 A. I would say it happens frequently,

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1 R. Kraakman

2 but most of the time? I don't know.

3 **Q. Do most statements by influential**
4 **analysts affect stock price?**

5 MR. FOX: Objection.

6 A. I don't know. I would offer Credit
7 Suisse reports as an example of statements by
8 influential analysts that by and large didn't
9 influence stock prices.

10 **Q. So it's your view that -- and so your**
11 **opinion is the same regardless of whether most**
12 **statements by influential analysts affect stock**
13 **price or have no effect on stock price; is that**
14 **correct?**

15 MR. FOX: Objection.

16 A. My opinion about what?

17 **Q. Whether the fraud-on-the-market**
18 **theory should apply to their statements like it**
19 **applies to issuer statements.**

20 A. I don't think, I don't think these
21 two points are connected. To the extent that
22 influential analysts repeat themselves or repeat
23 issuer releases in their reports, I wouldn't
24 expect them to influence stock prices.

25 I don't know what the proportion of,

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1 R. Kraakman

2 you know, revised recommendations, revised
3 forecasts, revised earning targets is to the
4 number of reports that don't make any
5 significant revisions, so that's what it would
6 turn on it seems to me.

7 **Q. Okay. Well, let's assume for the**
8 **moment that most statements by the group of**
9 **people you're referring to as influential**
10 **analysts don't have an effect on stock prices.**

11 A. Okay.

12 **Q. Would you still believe that the**
13 **fraud-on-the-market theory should apply to them**
14 **the same way it applies to issuers?**

15 MR. FOX: Objection.

16 A. Yeah.

17 **Q. Why?**

18 A. Well, I mean consider the analogy
19 with an issuer. The issuer has released a
20 misleading statement or has made a statement
21 that the issuer comes to believe is misleading
22 based on private information, and the issuer
23 fails to reveal that private information,
24 persists in making the same statement, stock
25 prices don't change as a consequence, no

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1 R. Kraakman

2 question a fraud-on-the-market doctrine would
3 apply to the issuer and I'm just analogizing an
4 influential analyst to the issuer, right?

5 **Q. What do issuers -- so are you**
6 **referring, are you referring to a fraud by an**
7 **omission here in that context?**

8 A. Yeah, it would be a fraud by
9 omission.

10 **Q. How about a fraud by misstatement**
11 **where someone is affirmatively misstating**
12 **something? Would you believe that the**
13 **fraud-on-the-market presumption should apply the**
14 **same way to any influential analyst as it does**
15 **to an issuer with respect to an affirmative**
16 **misstatement?**

17 A. Yes. I think they're in all respects
18 analogous.

19 **Q. And why do you think that?**

20 A. Because they're capable of distorting
21 market prices, both of them. The issuers
22 perhaps more so than most analysts, but
23 influential analysts certainly as well.

24 **Q. So in your view, whether the**
25 **fraud-on-the-market theory should apply and with**

Page 113

1 **R. Kraakman**

2 **that the presumption of reliance, turns solely**
3 **on ability to influence market prices; is that**
4 **correct?**

5 MR. FOX: Objection.

6 A. No. It's a legal doctrine. It turns
7 on the elements of 10b5.

8 **Q. I'm just trying to understand the**
9 **scope of your opinion here.**

10 **You have said that with respect to**
11 **omissions, it doesn't matter whether most**
12 **statements by influential analysts affect stock**
13 **price or not to your view that the**
14 **fraud-on-the-market theory should apply to their**
15 **omissions because they have the ability to**
16 **influence stock prices.**

17 A. That is correct.

18 **Q. Okay. And I believe you also said**
19 **that in your view whether most statements by**
20 **influential analysts affect stock price also**
21 **doesn't matter to your view that the**
22 **fraud-on-the-market theory should apply to their**
23 **statements again because they have the ability**
24 **to influence stock price.**

25 A. Correct.